

1 Ramon Rossi Lopez - rlopez@lopezmchugh.com
2 (California Bar Number 86361; admitted *pro hac vice*)
3 Lopez McHugh LLP
4 100 Bayview Circle, Suite 5600
5 Newport Beach, California 92660
6 949-812-5771

7 Mark S. O'Connor (011029) – mark.oconnor@gknet.com
8 Gallagher & Kennedy, P.A.
9 2575 East Camelback Road
10 Phoenix, Arizona 85016-9225
11 602-530-8000

12 *Co-Lead/Liaison Counsel for Plaintiffs*

13 UNITED STATES DISTRICT COURT

14 DISTRICT OF ARIZONA

15 Re Bard IVC Filters Products Liability
16 Litigation

17 No. MD-15-02641-PHX-DGC

18 DORIS JONES,

19 Plaintiffs,

20 v.

21 C.R. BARD, INC., a New Jersey
22 corporation and BARD PERIPHERAL
23 VASCULAR, an Arizona corporation,

24 Defendants.

25 **PLAINTIFFS' MOTION IN LIMINE #7**

26 (Assigned to the Honorable David G.
27 Campbell)

28 (Oral Argument Requested)

29 **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION IN**
30 **LIMINE TO EXCLUDE EVIDENCE OF ATTORNEY ADVERTISING AND**
31 **RELATED TOPICS**

32 Plaintiff seeks a pretrial ruling to preclude at trial evidence and argument relating to
33 any references to attorney advertising, counsel's specializing in personal injury or
34 products liability litigation, contingency fee agreements, circumstances under which
35 Plaintiff selected her counsel, or any reference to this litigation being driven by attorney
36 advertising.

37
38 **MEMORANDUM OF LAW**

1 In the first Bellwether trial in this MDL the parties entered into a stipulation as to
 2 certain motions *in limine* that would be unnecessary as it was agreed that certain topics
 3 would not be addressed, including any “[a]dvertising by Plaintiff’s counsel, Plaintiff’s
 4 counsel specializing in personal injury and/or products liability litigation, contingency fee
 5 agreements, and/or advertising by any counsel nationally for Bard IVC Filter cases and/or
 6 any other IVC filter case.” (Doc. 10235, at 2). Bard refuses to enter into that stipulation
 7 for this second bellwether trial.¹ Based on Bard’s previous arguments, including one
 8 Bard made on “Science Day”, Plaintiff anticipates that Bard will assert that Plaintiff’s
 9 counsel and attorneys representing plaintiffs generally have created a “lawyer-driven”
 10 case against Bard and a litigation crisis in order to inflame the jury. Such evidence is not
 11 relevant to Mrs. Jones’ claims. Fed. R. Evid. 401; *see also In re: Xarelto (Rivaroxaban)*
 12 *Products Liability Litigation*, 2:14-md-02592-EEF-MBN, Apr. 18, 2017 (Doc. 6254), at
 13 2-3 (sustaining motion to exclude evidence of circumstances plaintiff chose attorney and
 14 excluding evidence as to any advertising and timing of retention of counsel), copy
 15 attached at Exhibit A. Further, even if tangentially relevant, it should be excluded as it
 16 would unduly prejudice Plaintiff as to matters not relevant to her claims. Fed. R. Evid.
 17 402, 403.

18 Testimony about attorney advertising, fee arrangements, counsel’s focus or
 19 specialization in personal injury practice is immaterial to any fact or consequence in
 20 Plaintiff’s case and is highly prejudicial. There is no dispute here that Mrs. Jones’
 21 Eclipse IVC filter fractured and the broken fragment lodged in her pulmonary artery. No
 22 amount of attorney advertising caused that to happen, and attorney advertising does not
 23 make any disputed issue more or less likely to be true.

24
 25
 26 ¹ This refusal is ostensibly due to testimony by Alfred Jones that he was worried about
 27 Doris’ health with a fractured filter strut lodged in her and was wondering if he could get
 28 further information about filters when he saw an advertisement for an attorney and called
 a number to get more information. Dep. Tr. Alfred Jones Feb. 3, 2017, Ex. B, at 8:19-9:1;
 9:6-16; 9:22-10:3.

1 Attorney advertising is permitted by the American Bar Association and the Rules
 2 of Professional Responsibility in every jurisdiction, not to mention protected by the First
 3 Amendment. *See Bates v. State Bar of Arizona*, 433 U.S. 350, 376-80 (1977).
 4 Mentioning that Plaintiff's attorneys have engaged in advertising to find clients therefore
 5 risks unfairly associating Plaintiff's attorneys with some of the baser forms of attorney
 6 advertising which would be highly prejudicial. To allow evidence of attorney advertising
 7 in general to be admitted "would serve, potentially, to alienate the jury, by converting the
 8 trial into a 'referendum of lawful practices by plaintiff's counsel.'" *Hart v. RCI*
 9 *Hospitality Holdings, Inc.*, 90 F. Supp.3d 250, 272 (S.D.N.Y. 2015). No other evidence
 10 admitted at trial could make the professional conduct of plaintiffs' attorneys in this MDL
 11 (or generally) probative of any issue in this case. Similarly, testimony and evidence as to
 12 "lawyer-driven" lawsuits are immaterial and unduly prejudicial. "Argument aimed at a
 13 party's counsel is improper and risks depriving the party of a fair trial." *Stollings v.*
 14 *Ryobe Techs., Inc.*, 725 F.3d 753, 761 (7th Cir. 2013). Any mention of the issue "can
 15 serve only to confuse, inflame, and introduce unfair prejudice" in violation of FRE 403.
 16 *Hart*, 90 F.Supp.3d at 273; *see also Ruzhinskaya v. HealthPort Technologies, LLC*, 2016
 17 WL 7388371 (S.D.N.Y 2016) (forbidding a defendant to defend its case by making
 18 insinuations or attacks on lawyer, rather case should be decided on the merits).

19 Moreover, it was Alfred Jones, Plaintiff's husband, who contacted an attorney
 20 about his wife's case. He testified he never saw television advertising; rather he saw an
 21 ad on the internet while on Facebook and called a telephone number.² Ex. B at 8:19-9:1;
 22 9:6-16. 9:22-10:3.

23 Bard may also attempt to use Mrs. Jones' engagement of legal services as a means
 24 to attack her or her attorneys' credibility; first by accusing Mrs. Jones of seeking some
 25 form of easy money, and second by accusing her lawyers and the MDL lawyers in

26
 27 ² As a point of clarification, Plaintiff's attorneys at Gallagher & Kennedy came to
 28 represent the Joneses based on a referral, not based on any advertising they engaged in on
 Facebook.

1 general of drumming up this litigation with advertising. Such evidence for this sort of
2 use is not only unsupported by the record but also irrelevant and unfairly prejudicial.
3 This evidence should be excluded under FRE 402 and 403. It would also waste an
4 extraordinary amount of time and distract from the meritorious issues in the case if the
5 parties are forced to jockey back and forth about collateral issues like when and why Mrs.
6 Jones hired a law firm to assert her rights. *See, e.g., In re: Welding Fume Products Liab.*
7 *Litig.*, 2010 WL 7699456, at **65-68 (N.D. Ohio 2010).

8 The presence of attorney advertising in this trial also raises the specter of evidence
9 of other lawsuits against Bard. By bringing in attorney advertising, Bard necessarily puts
10 at issue whether the lawsuit is “attorney driven” and not meritorious. To counter that, the
11 substantial evidence regarding the number of claims Bard faces on these devices is
12 immediately relevant. Plaintiffs stipulated in *Booker* not to admit evidence of other
13 lawsuits, but that stipulation was premised on the agreement not to have attorney
14 advertising as part of the case. In the event attorney advertising is raised in this case,
15 Plaintiff will necessarily need to address it by demonstrating that the lawsuits are
16 meritorious enough for there to be 3,700+ cases filed in this Court. Plaintiff’s counsel
17 previously sought to avoid this sideshow by stipulating that both attorney advertising and
18 evidence of the other lawsuits not be presented at trial. Plaintiff requests that the Court
19 exclude all such evidence in this case, which will allow Plaintiff to agree not to discuss or
20 argue about the other filed cases in this MDL.

21
22
23
24
25
26
27
28

1 RESPECTFULLY SUBMITTED this 18th day of April 2018.
2
3

4 GALLAGHER & KENNEDY, P.A.
5
6

7 By: /s/ Mark S. O'Connor
8

9 Mark S. O'Connor
10 2575 East Camelback Road
11 Phoenix, Arizona 85016-9225
12
13

14 LOPEZ McHUGH LLP
15 Ramon Rossi Lopez (CA Bar No. 86361)
16 (admitted *pro hac vice*)
17 100 Bayview Circle, Suite 5600
18 Newport Beach, California 92660
19
20

21 *Co-Lead/Liaison Counsel for Plaintiffs*
22
23

24 **CERTIFICATE OF SERVICE**
25
26

27 I hereby certify that on this 18th day of April, 2018, I electronically transmitted the
28 attached document to the Clerk's Office using the CM/ECF System for filing and
transmittal of a Notice of Electronic Filing.
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
8010
8011
8012
8013
8014
8015
8016
8017
8018
8019
8020
8021
8022
8023
8024
8025
8026
8027
8028
8029
8030
8031
8032
8033
8034
8035
8036
8037
8038
8039
8040
8041
8042
8043
8044
8045
8046
8047
8048
8049
8050
8051
8052
8053
8054
8055
8056
8057
8058
8059
8060
8061
8062
8063
8064
8065
8066
8067
8068
8069
8070
8071
8072
8073
8074
8075
8076
8077
8078
8079
8080
8081
8082
8083
8084
8085
8086
8087
8088
8089
8090
8091
8092
8093
8094
8095
8096
8097
8098
8099
80100
80101
80102
80103
80104
80105
80106
80107
80108
80109
80110
80111
80112
80113
80114
80115
80116
80117
80118
80119
80120
80121
80122
80123
80124
80125
80126
80127
80128
80129
80130
80131
80132
80133
80134
80135
80136
80137
80138
80139
80140
80141
80142
80143
80144
80145
80146
80147
80148
80149
80150
80151
80152
80153
80154
80155
80156
80157
80158
80159
80160
80161
80162
80163
80164
80165
80166
80167
80168
80169
80170
80171
80172
80173
80174
80175
80176
80177
80178
80179
80180
80181
80182
80183
80184
80185
80186
80187
80188
80189
80190
80191
80192
80193
80194
80195
80196
80197
80198
80199
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
80210
80211
80212
80213
80214
80215
80216
80217
80218
80219
80220
80221
80222
80223
80224
80225
80226
80227
80228
80229
80230
80231
80232
80233
80234
80235
80236
80237
80238
80239
80240
80241
80242
80243
80244
80245
80246
80247
80248
80249
80250
80251
80252
80253
80254
80255
80256
80257
80258
80259
80260
80261
80262
80263
80264
80265
80266
80267
80268
80269
80270
80271
80272
80273
80274
80275
80276
80277
80278
80279
80280
80281
80282
80283
80284
80285
80286
80287
80288
80289
80290
80291
80292
80293
80294
80295
80296
80297
80298
80299
80200
80201
80202
80203
80204
80205
80206
80207
80208
80209
8021